



# PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION

445 Twelfth Street, S.W.

WASHINGTON, D.C. 20554

**DA 02-3417**

News media information 202/418-0500 Fax-On-Demand 202/418-2830 Internet: <http://www.fcc.gov> <ftp.fcc.gov>

**Released: December 12, 2002**

**WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON REQUEST FOR  
WAIVER OF SECTION 22.805 OF THE COMMISSION'S RULES BY METRO TELECOM, INC.  
TO OPERATE PRIVATE LAND MOBILE RADIO SYSTEMS IN THE NEW YORK CITY  
METROPOLITAN AREA ON FREQUENCIES OFFSET FROM THOSE ALLOCATED TO THE  
AIR-GROUND RADIOTELEPHONE SERVICE**

**Comment Date: January 10, 2003**

**Reply Date: January 24, 2003**

On February 13, 2002, Metro Telecom, Inc. (Metro Telecom) filed a license application (File No. 0000770835) and a request for waiver to modify Station WPMB478 to add the following frequencies to the authorization at Jamaica, New York, Newark, New Jersey, and Flushing, New York: 459.7375 MHz, 459.8625 MHz, 459.8875 MHz, 459.9125 MHz, 459.9375 MHz, 459.9625 MHz, and 459.9875 MHz.

Metro Telecom's system provides two-way radio communications services to airport-related entities operating within a two-mile radius of the perimeters of LaGuardia Airport, JFK International Airport, and Newark International Airport. Metro Telecom requests a waiver of Section 22.805 of the Commission's Rules, 47 C.F.R. § 22.805, which governs the allocation of frequencies for the general aviation air-ground service. Metro Telecom's proposed base stations would transmit on frequencies offset by 12.5 kHz from the 459 MHz frequencies allocated to the general aviation air-ground service.

Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, provides that a waiver of the Commission's Rules may be granted if it is shown that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or in view of the unique or unusual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest or if the applicant has no reasonable alternative. Metro Telecom states that it meets the criteria for a waiver because under the unique circumstances of this case, it has no reasonable alternative.

In this connection, Metro Telecom claims that its systems are required to operate in the trunked mode because of the volume of users and traffic on its systems. Metro Telecom alleges that there are no suitable channels available under Part 90 of the Commission's Rules for centralized trunking in the New York City (NYC) metropolitan area. It also states that obtaining spectrum at an auction or via partitioning is unrealistic (and not affordable), due in part to the high valuation of spectrum in and around NYC.

Further, Metro Telecom avers that it has not, and would not, cause harmful interference to other licensees operating in the area, and that there would be no adverse impact to other licensees because no other licenses may be granted on the subject frequencies near any of the NYC airports due to the distance separation requirements imposed by the Commission's Rules. *See* 47 C.F.R. § 22.813. Metro Telecom states that it has held an experimental authorization to operate on these frequencies for almost two and one-half years without causing interference to any general aviation air-ground system.

Interested parties may file comments on the Waiver Request on or before **January 10, 2003**. Parties interested in submitting reply comments must do so on or before **January 24, 2003**. All comments should reference the subject waiver request including the DA number of this *Public Notice*, and should be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-325, Washington, D.C. 20554. A copy of each filing should be sent to (1) Qualex International, Portals II, 445 12<sup>th</sup> Street, SW, Room CY-B402, Washington, D.C. 20554, (202) 863-2893; (2) Guy Benson, Esq., Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, 445 Twelfth Street, SW, Room 3-A334, Washington, D.C. 20554; and (3) Maria Ringold, Federal Communications Commission, Consumer and Governmental Affairs Bureau, Reference Information Center, 445 Twelfth Street, S.W., Room CY-B529, Washington, D.C. 20554.

The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only by the Commission's contractor, Vistrionix, Inc., at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering 236 Massachusetts Avenue, N.E. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. *See FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, Public Notice, 16 FCC Rcd 22165 (2001).*

The full text of the Waiver Request, comments and reply comments will be available for inspection and duplication during regular business hours in the FCC Reference Information Center (RIC) of the Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. Copies also may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12<sup>th</sup> Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 863-2893, facsimile (202) 863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com). For further information regarding the public reference file for this Waiver Request, contact Maria Ringold, Chief, Wireless Branch, RIC, (202) 418-1355.

Unless otherwise provided, requests for waiver of the Commission's Rules are subject to treatment by the Commission as restricted proceedings for *ex parte* purposes under Section 1.1208 of the Commission's Rules, 47 C.F.R. § 1.1208. Because of the policy implications and potential impact of this proceeding on persons not parties to the waiver request, we believe it would be in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules. *See* Sections 1.1200(a), 1.1206 of the Commission's Rules, 47 C.F.R. §§ 1.1200(a), 1.1206. Therefore, subsequent to the release of this *Public Notice*, *ex parte* presentations that are made with respect to the issues involved in the subject waiver request will be allowed but must be disclosed in accordance with the requirements of Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b).

For further information, contact Guy Benson of the Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau at (202) 418-2946, TTY (202) 418-7233, or via email to [gbenson@fcc.gov](mailto:gbenson@fcc.gov).

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

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